

## Alcohol and Tobacco Tax and Trade Bureau, Treasury

## § 40.531

report, in accordance with the provisions of §§ 40.523 and 40.522, respectively, and surrender the permit to the appropriate TTB officer.

(26 U.S.C. 5721, 5722)

### § 40.526 Minimum manufacturing and activity requirements.

A permit to manufacture processed tobacco will only be granted to those persons engaged in the processing of tobacco. A permit may be suspended, and subsequently revoked, if the person has no activity under such permit for a period of one year. A person whose permit as a manufacturer of processed tobacco has been revoked for non-use, who wishes to engage in such business, must re-apply for such permit.

(26 U.S.C. 5712)

### § 40.527 Authorization to package processed tobacco.

A permit to manufacture processed tobacco does not authorize packaging of processed tobacco. Packaging of processed tobacco may only occur on the bonded premises of a manufacturer of tobacco products.

### § 40.528 Suspension and revocation of permit.

Where the appropriate TTB officer has reason to believe that a manufacturer of processed tobacco has not in good faith complied with the provisions of 26 U.S.C. chapter 52, and regulations thereunder, or with any other provision of 26 U.S.C. with intent to defraud, or has violated any condition of his permit, or has failed to disclose any material information required or made any material false statement in the application for the permit, or is, by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with 26 U.S.C. chapter 52, or has been convicted of a felony violation of any provision of Federal or State criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, the appropriate TTB officer shall issue an order, stating the facts charged, citing

such person to show cause why his permit should not be suspended or revoked. Such citation shall be issued and opportunity for hearing afforded in accordance with part 71 of this chapter, which part is applicable to such proceedings. If, after hearing, the hearing examiner, or on appeal, the Administrator, finds that such person has not shown cause why his permit should not be suspended or revoked, such permit shall be suspended for such period as the appropriate TTB officer deems proper or shall be revoked.

EFFECTIVE DATE NOTE: By T.D. TTB-80, at 74 FR 37552, July 29, 2009, § 40.528 was amended in the first sentence by removing the phrase “manufacturer of tobacco products” and adding in its place the phrase “manufacturer of processed tobacco”, effective July 29, 2009 through June 22, 2012.

### OTHER PROVISIONS RELATING TO MANUFACTURERS OF PROCESSED TOBACCO

### § 40.531 Alternate methods or procedures.

(a) *General.* A manufacturer of processed tobacco, on specific approval by the appropriate TTB officer as provided in this section, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this subpart. The appropriate TTB officer may approve an alternate method or procedure, subject to stated conditions, when the appropriate TTB officer finds that—

(1) Good cause has been shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure, and

(3) The alternate method or procedure will not be contrary to any provision of law, and will not result in an increase in cost to the Government or hinder the effective administration of this subpart.

(b) *Application.* A manufacturer of processed tobacco who desires to employ an alternate method or procedure must submit a written application to the appropriate TTB officer. The application shall specifically describe the proposed alternate method or procedure, and shall set forth the reasons

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therefor. An alternate method or procedure shall not be employed until the application has been approved by the appropriate TTB officer. The manufacturer shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization for any alternate method or procedure may be withdrawn whenever, in the judgment of the appropriate TTB officer, the effective administration of this part is hindered. Any authorization of the appropriate TTB officer under this section shall be retained as part of the manufacturer's records in accordance with this subpart.

## § 40.532 Emergency variations from requirements.

The appropriate TTB officer may approve methods of operation other than as specified in this subpart, where it is determined that an emergency exists and the proposed variations from the specified requirements are necessary, and provided that the proposed variations will not hinder the effective administration of this subpart and will not be contrary to any provision of law. Variations from requirements granted under this section are conditioned on compliance with the procedures, conditions, and limitations set forth in the approval of the application. Failure to comply in good faith with such procedures, conditions, and limitations will automatically terminate the authority for such variations, and the manufacturer of processed tobacco thereupon must fully comply with the prescribed requirements of the regulations from which the variations were authorized. Authority for any variation may be withdrawn whenever in the judgment of the appropriate TTB officer the effective administration of this subpart is hindered by the continuation of such variation. Where a manufacturer desires to employ such variation, the manufacturer must submit a written application to do so to the appropriate TTB officer. The application must describe the proposed variations and set forth the reasons therefor. Variations may not be employed until the application has been approved. Any authorization of the appropriate TTB officer under this sec-

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tion shall be retained as part of the manufacturer's records, in accordance with this subpart.

## § 40.533 Penalties and forfeitures.

Anyone who fails to comply with the provisions of this subpart may be liable to the civil and criminal penalties, and forfeitures, provided by law.

## § 40.534 Power of attorney.

If the application for permit or any report or other document required to be executed under this subpart is to be signed by an individual (including one of the partners for a partnership or one of the members of an association) as an attorney in fact for any person, or if an individual is to otherwise officially represent such person, power of attorney on TTB F 5000.8 shall be furnished to the appropriate TTB officer. Such power of attorney is not required for persons whose authority is furnished with the corporate documents as required by § 40.494. TTB F 5000.8 does not have to be filed again with the appropriate TTB officer where such form has previously been submitted to that appropriate TTB officer and is still in effect.

## PART 41—IMPORTATION OF TOBACCO PRODUCTS, CIGARETTE PAPERS AND TUBES, AND PROCESSED TOBACCO

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